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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555-jmp

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., ET AL.,

Debtors.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

June 30, 2011
10:06 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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Debtors' Thirty-Fifth Omnibus Objection to Claims (Valued
Derivative Claims)

Debtors' Fortieth Omnibus Objection to Claims (Late-Filed
Claims)

Debtors' Sixty-Seventh Omnibus Objection to Claims (Valued
Derivative Claims)

Debtors' Seventy-Fourth Omnibus Objection to Claims (To
Reclassify Proofs of Claim as Equity Interests)

Debtors' One Hundred Third Omnibus Objection to Claims (Valued
Derivative Claims)

Debtors' One Hundred Eleventh Omnibus Objection to Claims (No
Liability Claims)

Debtors' One Hundred Twenty-Seventh Omnibus Objection to Claims
(Settled Derivatives Claims)

Debtors' One Hundred Thirty-Third Omnibus Objection to Claims
(To Reclassify Proofs of Claim as an Equity Interest)

1 Debtors' One Hundred Thirty-Fourth Omnibus Objection to Claims
2 (To Reclassify Proofs of Claim as an Equity Interest)

3

4 Debtors' One Hundred Thirty-Fifth Omnibus Objection to Claims
5 (To Reclassify Proofs of Claim as an Equity Interest)

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7 Debtors' One Hundred Thirty-Sixth Omnibus Objection to Claims
8 (Misclassified Claims)

9

10 Debtors' One Hundred Thirty-Seventh Omnibus Objection to Claims
11 (Valued Derivative Claims)

12

13 Debtors' One Hundred Thirty-Eighth Omnibus Objection to Claims
14 (No Liability Derivatives Claims)

15

16 Debtors' One Hundred Thirty-Ninth Omnibus Objection to Claims
17 (Inconsistent Debtor Claims)

18

19 Debtors' One Hundred Fortieth Omnibus Objection to Claims
20 (Duplicative of Indenture Trustee Claims)

21

22 Debtors' One Hundred Forty-First Omnibus Objection to Claims
23 (No Supporting Documentation Claims)

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25 Debtors' One Hundred Forty-Second Omnibus Objection to Claims

1 (Amended and Superseded Claims)

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3 Debtors' One Hundred Forty-Third Omnibus Objection to Claims
4 (Late-Filed Claims)

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6 Debtors' One Hundred Forty-Fourth Omnibus Objection to Claims
7 (To Reclassify Proofs of Claims as Equity Interests)

8

9 Debtors' One Hundred Forty-Fifth Omnibus Objection to Claims
10 (Settled Derivatives Claims)

11

12 Debtors' One Hundred Forty-Sixth Omnibus Objection to Claims
13 (Settled Derivatives Claims)

14

15 Debtors' One Hundred Forty-Seventh Omnibus Objection to Claims
16 (Partially Settled Guarantee Claims)

17

18 Debtors' Ninety-Eighth Omnibus Objection to Claims
19 (Insufficient Documentation)

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21 Debtors' Ninety-Ninth Omnibus Objection to Claims (Insufficient
22 Documentation)

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24 Debtors' One Hundred Ninth Omnibus Objection to Claims
25 (Insufficient Documentation)

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Motion of Counsel to Mark Glasser to Withdraw

First Motion of Mark Glasser to Extend Time for Claim

Transcribed by: Dena Page

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21 GURDIP REHAL, California Department of Water Resources

22 A. JAMES BOYAJIAN, ESQ., Attorney for Jeffery K. Wardell

1 P R O C E E D I N G S

2 THE COURT: Be seated please. Good morning.

3 MR. BERNSTEIN: Good morning, Your Honor. Mark

4 Bernstein from Weil, Gotshal & Manges on behalf of the Lehman

5 Chapter 11 debtors. We are here for a claims hearing, this

6 morning. We have a number of uncontested items and then a few

7 contested items that mostly revolve around a similar issue. As

8 usual, we may take some of the uncontested items out of order

9 to avoid people getting up and down.

10 At this point, I'll turn the podium over to my

11 colleague, Teresa Brady, to handle the first portion.

12 THE COURT: Okay.

13 MS. BRADY: Good morning, Your Honor. Teresa Brady

14 from Weil, Gotshal & Manges on behalf of debtors. I will be

15 addressing agenda items number 1, 3, 5, and 12. Each of these

16 are nonconsensual reduce and allow omnibus objections, and each

17 of these are uncontested today.

18 THE COURT: Okay.

19 MS. BRADY: Turning to agenda items number 1 and

20 number 3, this was omnibus objection thirty-five and sixty-

21 seven. Since the last claims hearing on June 2nd, the debtors

22 have successfully settled two additional claims on the thirty-

23 fifth omnibus objection -- this was the Central Puget Transit

24 Authority -- and six additional claims on the sixty-seventh

25 omnibus objection; this was with the counterparties Citibank,

1 Lloyds, TSB Bank, and Pentwater Growth Fund. So we therefore
2 respectfully request that Your Honor grant a fourth
3 supplemental order on the thirty-fifth omnibus objection and a
4 fourth supplemental order on the sixty-seventh omnibus
5 objection reducing and allowing these claims to the settlement
6 amount.

7 THE COURT: I will do that.

8 MS. BRADY: Thank you, Your Honor.

9 Turning to agenda item number 5, this is the 103rd
10 omnibus objection. Your Honor previously granted an amended
11 order on this objection on May 19th which reduced and allowed
12 the number of claims in this omni. One of the claims that was
13 reduced in that amended order belonged to a counterparty,
14 Pinnacle American Core Plus Bond Fund. Pinnacle never filed a
15 timely response and to date still has not filed a response or
16 tried to contact the debtors to our knowledge. Nonetheless,
17 the debtors have since discovered that due to inadvertent
18 error, the reduce and allow amount as to Pinnacle on that
19 amended order was incorrect, and therefore, we respectfully
20 request that Your Honor consider a second supplemental order
21 which would revise that modified amount actually in Pinnacle's
22 favor.

23 THE COURT: Happy to do that.

24 MS. BRADY: And finally, turning to agenda item number
25 12, this is the 137th omnibus objection. The debtors, in this

1 omni, are seeking to reduce and allow twenty-one claims
2 belonging to nine counterparties. Three of these
3 counterparties did not respond at all to the omnibus objection.
4 The debtors, therefore, seek to reduce and allow their five
5 claims on an uncontested basis.

6 With respect to the balance of the claims on this
7 omni, the counterparties have either filed timely responses or
8 been granted extensions to the time to respond by the debtors,
9 and we have actually spoken by telephone or by e-mail to each
10 of these counterparties, so therefore, we respectfully request
11 that these claims be adjourned to a future hearing so that we
12 can try to have some meaningful settlement negotiations.

13 THE COURT: So this is just an adjournment as to this?

14 MS. BRADY: It is -- we're seeking an order as to the
15 five claims which the respondents did not respond to this
16 omnibus objection, and then an adjournment as to the balance of
17 the claims on this omni.

18 THE COURT: Fine, I'll grant that relief.

19 MS. BRADY: Thank you, Your Honor. And if there are
20 no further questions, I'd like to turn the podium over to my
21 colleague, Sarah Decker.

22 THE COURT: That's fine.

23 MS. DECKER: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MS. DECKER: Sarah Decker with Weil Gotshal for the

1 debtors. I'll be covering agenda items numbers 2, 4, 7, and 14
2 through 22 in the uncontested portion of today's agenda.

3 Agenda item number 2 is a carryover item from the
4 debtors' omnibus objection to claims which Your Honor
5 previously granted. The fortieth omnibus objection sought to
6 disallow and expunge claims that were filed after the
7 applicable bar date. This matter is going forward today solely
8 as to the five PIMCO claims that are listed on Exhibit 2 to
9 this morning's agenda. Those claims are claims number 35173,
10 34745, 34746, 36788, and 35141. The debtors have determined
11 that PIMCO no longer opposes the relief sought in the objection
12 with respect to those claims. Accordingly, the debtors
13 respectfully request that the Court grant the fortieth omnibus
14 objection with respect to the five PIMCO claims listed on
15 Exhibit 2.

16 THE COURT: It's granted as to those claims.

17 MS. DECKER: Thank you, Your Honor.

18 Agenda item number 4 is a carryover item from the
19 debtors' seventy-fourth omnibus objection to claims which Your
20 Honor had previously granted.

21 The seventy-fourth omnibus objection seeks to
22 reclassify as equity interest proofs of claim that are based on
23 ownership of stock in the debtors. This matter is going
24 forward solely on an uncontested basis with respect to the
25 claims of Federated Strategic Income Fund and Federated Bond

1 fun, claim numbers 15065 and 15066, respectively. The debtors
2 have determined that the Federated Funds no longer oppose the
3 relief sought in the objection with respect to those claims.
4 Accordingly, the debtors respectfully request that the Court
5 grant the seventy-fourth omnibus objection with respect to the
6 Federated Funds claims, numbers 15065 and 15066.

7 THE COURT: It's granted as to those two claims.

8 MS. DECKER: Thank you, Your Honor.

9 Agenda item number 7 is a carryover item from the
10 127th omnibus objection to claims which Your Honor heard and
11 granted at the hearing on June 2nd. The 127th omnibus
12 objection seeks to modify and allow claims for which the
13 parties have reached an agreement with respect to the claim
14 amount, classification, and/or debtor entity that is not
15 reflected on the claimant's proof of claim. The matter is
16 going forward today solely as to the claims of Fannie Mae and
17 City View Plaza, claim numbers 40611 and 36803 respectively.
18 The objection, as to all other claims, was previously granted,
19 withdrawn, or otherwise resolved.

20 Fannie Mae filed a response to the 127th omnibus
21 objection and it later withdrew that response after debtors
22 clarified the relief that was sought in the objection.
23 Additionally, City View Plaza have indicated that they do not
24 oppose the relief sought by the objection. Accordingly, the
25 debtors respectfully request that the Court grant the 127th

1 omnibus objection with respect to Fannie Mae and City View
2 Plaza's claims, numbers 40611 and 36803.

3 THE COURT: The 127th omnibus objection to claims is
4 granted as to those two claims.

5 MS. DECKER: Thank you, Your Honor.

6 Moving to agenda item number 14, which is the debtors'
7 139th omnibus objection to claims, that objection seeks to
8 modify claims on the claims register so that the claims are
9 asserted against LBHI, which appear to be the debtor against
10 whom the claim is asserted. Certain of the claims subject to
11 this objection have conflicting information with respect to the
12 debtor and/or case number. For example, a proof of claim may
13 list LBHI as a debtor against who the claim is asserted, but
14 then the claim lists the incorrect case number. In other
15 instances, the proof of claim indicates that a guarantee claim
16 is being asserted against LBHI, but the proof of claim lists
17 the debtor as the primary obligor. So the debtors are merely
18 seeking to modify the claims register to reflect the fact that
19 the claims are being asserted against LBHI, which is the
20 creditor against whom the claims are intended to be asserted.

21 The debtors did not receive any responses contesting
22 the modification of the debtor to LBHI and we are proceeding on
23 an uncontested basis. Accordingly, the debtors respectfully
24 request that the Court grant the 139th omnibus objection to
25 claims.

1 THE COURT: The 139th omnibus objection to claims is
2 granted.

3 MS. DECKER: Thank you, Your Honor.

4 Agenda item number 15 is the 140th omnibus objection
5 to claims. This objection seeks to disallow and expunge
6 individual and noteholder claims that are duplicative of the
7 claims filed by Wilmington Trust, Bank of New York Mellon,
8 and/or U.S. Bank Indenture as indenture trustee for those
9 notes. The debtors are only proceeding with respect to the
10 uncontested claims objections that have not been adjourned or
11 otherwise resolved. And accordingly, the debtors respectfully
12 request that the Court grant the 140th omnibus objection to
13 claims.

14 THE COURT: 140th omnibus objection to claims is
15 granted on an uncontested basis.

16 MS. DECKER: Thank you, Your Honor.

17 Agenda item number 16 is the 141st omnibus objection
18 to claims. That objection seeks to disallow and expunge claims
19 that violate the Court's bar date order as they were submitted
20 without any supporting documentation. The debtors are
21 proceeding only with respect to those claims that are
22 uncontested and not been adjourned or otherwise resolved.
23 Accordingly, the debtors respectfully request that the Court
24 grant the 141st omnibus objection to claims.

25 THE COURT: The 141st omnibus objection to claims is

1 granted on an uncontested basis.

2 MS. DECKER: Thank you.

3 Agenda item number 17 is the 142nd omnibus objection
4 to claims. That objection seeks to disallow and expunge claims
5 that were amended and superseded by subsequently filed claims.
6 The debtors are proceeding only with respect to the uncontested
7 claims objections that have not been adjourned or otherwise
8 resolved. Accordingly, the debtors respectfully request that
9 the Court grant the 142nd omnibus objection to claims.

10 THE COURT: The 142nd omnibus objection to claims is
11 granted on an uncontested basis.

12 MS. DECKER: Thank you, Your Honor.

13 Agenda item number 18 is the 143rd omnibus objection
14 to claims. That omnibus objection seeks to disallow and
15 expunge claims that were filed after the applicable bar date.
16 The debtors are proceeding only with respect to those claims
17 that are uncontested and have not been adjourned or otherwise
18 resolved. Accordingly, the debtors respectfully request that
19 the Court grant the 143rd omnibus objection to claims.

20 THE COURT: The 143rd omnibus objection to claims is
21 granted on an uncontested basis.

22 MS. DECKER: Thank you, Your Honor.

23 Agenda item number 19 is the 144th omnibus objection
24 to claims. That omnibus objection seeks to reclassify as
25 equity interests proofs of claim that are based on the

1 ownership of stock in the debtors. Again, the debtors are
2 proceeding only with respect to those claims that are
3 uncontested and have not been adjourned or otherwise resolved.
4 Accordingly, the debtors respectfully request that the Court
5 grant the 144th omnibus objection to claims.

6 THE COURT: The 144th omnibus objection to claims is
7 granted on an uncontested basis.

8 MS. DECKER: Thank you, Your Honor.

9 Agenda item number 20 is the 145th omnibus objection
10 to claims. That objection seeks to the modification and
11 allowance of claims for which the parties have reached an
12 agreement with respect to the claim amount, classification, or
13 entity that is not reflected on the claimant's proof of claim.
14 This objection seeks to modify the claims to conform to the
15 parties' agreement. Counsel negotiated a small modification to
16 the language of the order on the 127th omnibus objection and I
17 have a redline for Your Honor's review, if I may approach.

18 THE COURT: You may. Thank you.

19 MS. DECKER: The order on the 127th omnibus objection
20 was modified to address a concern raised by Poudre Valley
21 Healthcare whose claims have been settled against some but not
22 all of the debtors. Accordingly, the revised order now limits
23 the claimant's rights to distribution from the applicable
24 debtor or debtors, as opposed to all debtors. The debtors did
25 not receive any responses to this 145th omnibus objection, and

1 we are proceeding on an uncontested basis. Accordingly, the
2 debtors respectfully request that the Court grant the 145th
3 omnibus objection to claims.

4 THE COURT: The 145th omnibus objection to claims is
5 granted on the basis of the revised order that you have
6 submitted to me.

7 MS. DECKER: Thank you, Your Honor.

8 Agenda item number 21 is the 146th omnibus objection
9 to claims. The 146th omnibus objection seeks the disallowance
10 and expungement of derivative claims that have been settled
11 between the parties either with a payment owing to the debtors
12 with no amounts being due to the parties or with a counterparty
13 being granted an allowed claim against one or more debtors in
14 exchange for a release of all the other derivatives claims that
15 are asserted by the claimant relating thereto. The 146th
16 omnibus objection seeks to expunge those claims as necessary to
17 effectuate the parties' agreement.

18 The debtors received one response to this objection
19 which was filed by Goldman Sachs Lending Partners, LLC in
20 regards to its claim number 17601. Goldman's limited response
21 and reservation of rights simply clarifies that they do not
22 oppose the relief sought in the 146th omnibus objection.
23 Accordingly, the debtors respectfully request that the Court
24 grant the 146th omnibus objection to claims.

25 THE COURT: The 146th omnibus objection to claims is

1 granted.

2 MS. DECKER: Thank you, Your Honor.

3 Agenda item number 22 is the 147th omnibus objection.

4 That objection seeks to reduce, reclassify, and/or allow a
5 portion of certain guarantee claims that are asserted against
6 LBHI while permitting the remaining portion of those claims to
7 remain on the claims register pending resolution.

8 The parties have entered into agreements partially
9 resolving the claims, and the objection seeks, simply, to
10 bifurcate those claims that have been partially settled to
11 effectuate the settlement of a portion of the claim while the
12 remaining portion of the claim remains unresolved and pending
13 on the claims register. The debtors did not receive any
14 responses to the 147th omnibus objection, and we are proceeding
15 on an uncontested basis. Accordingly, the debtors respectfully
16 request that the Court grant the 147th omnibus objection to
17 claims.

18 THE COURT: The 147th omnibus objection to claims is
19 granted on an uncontested basis.

20 MS. DECKER: Thank you, Your Honor. And with that,
21 I'd like to hand the podium back over to Mark Bernstein who
22 will continue this morning's agenda beginning with item number
23 6.

24 THE COURT: Okay, thank you.

25 MS. DECKER: Thank you.

1 MR. BERNSTEIN: Mark Bernstein from Weil on behalf of
2 the Lehman Chapter 11 debtors.

3 The next item on the agenda that I will be handling is
4 item number 6, which is the 111th omnibus objection. This
5 objection was previously heard in a related-to claims based on
6 various litigations that were commenced against Lehman
7 affiliates but to which any debtor -- to which no debtor was
8 actually a party. These -- two parties objected to the
9 objection. We worked out some additional language to add to
10 these parties that nothing in this order has any effect on
11 their claims against any nondebtor defendant in that
12 litigation. Subject to the addition of that language, these
13 parties have no further objection to their claims being
14 disallowed.

15 And with that, we respectfully request Your Honor
16 grant the supplemental order for the 111th omnibus objection to
17 claims.

18 THE COURT: It's granted.

19 MR. BERNSTEIN: Thank you.

20 Agenda items number 8, 9, and 10 relate to objections
21 133, 134, and 135. Each of these objections relates to claims
22 based on restricted stock units which are held by former
23 employees of the Lehman enterprise. These stock units entitle
24 the employees only to receive common stock of LBHI at some
25 point in the future. As a result, the debtors are seeking to

1 reclassify these claims as equity interests, as opposed to
2 claims against LBHI.

3 We're going forward today on an uncontested basis.
4 Any responses we've received have been adjourned to a future
5 hearing. As a result, we request Your Honor grant the 133rd,
6 134th, and 135th omnibus objection to claims.

7 THE COURT: Those three omnibus objections are granted
8 on an uncontested basis.

9 MR. BERNSTEIN: Thank you, Your Honor.

10 Agenda item number 11 relates to omnibus objection
11 136. This objection seeks to reclassify claims that were filed
12 as secured claims as unsecured claims against the debtors. The
13 claims either checked the box on a proof of claim form that
14 asserted they were secured or included some sort of language in
15 an appendix that said they were secured by some sort of right.
16 In many cases, it was a reservation of rights that we may be
17 secured by a right of setoff at some point in the future. The
18 debtors are not seeking at this point to affect the parties'
19 rights to setoff, and we've added the language to the order to
20 that effect.

21 In addition, it was -- sometimes it was unclear
22 whether the party was filing as a secured claim or an unsecured
23 claim, but for the avoidance of doubt, we included those on
24 these objections to reclassify them.

25 To the extent anybody responded, we've adjourned that;

1 we're going forward today on an uncontested basis. And we
2 respectfully request Your Honor grant the 136th omnibus
3 objection.

4 THE COURT: The 136th omnibus objection is granted on
5 an uncontested basis.

6 MR. BERNSTEIN: Thank you, Your Honor. The last
7 uncontested item is the 138th omnibus objection. It's number
8 13 on the agenda. This relates to derivative contracts for
9 which claims were filed where the debtors analyzed the
10 derivatives and determined that, actually, the debtors are in
11 the money on these derivative contracts or no money is owed by
12 the debtors.

13 There were a couple responses received. The debtors
14 are seeking to work those matters out with the parties
15 separately. So we're going forward on an uncontested basis
16 today and respectfully request Your Honor grant the 138th
17 omnibus objection to claims.

18 THE COURT: The 138th omnibus objection to claims is
19 granted on an uncontested basis.

20 MR. BERNSTEIN: Thank you, Your Honor. That concludes
21 the uncontested portion of the agenda. We do have a few
22 contested items on the agenda today, and I'm going to turn the
23 podium over to Mike Rollin of Reilly Pozner who's going to be
24 representing the debtors in these matters.

25 THE COURT: Okay.

1 MR. ROLLIN: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. ROLLIN: Your Honor, my name is Michael Rollin,
4 and I'm with Reilly Pozner in Denver, Colorado. We are special
5 counsel to the debtors for residential mortgage-backed
6 securities and secondary market litigation. We primarily
7 prosecute and defend claims related to representations and
8 warranties and RMBS transactions.

9 I'll be handling agenda items number 23, 24, and 25
10 this morning, which are debtors' 98th, 99th, and 109th omnibus
11 objection to claims respectively. A couple of these are
12 proceeding on an uncontested basis. I'm going to take care of
13 them first. Those are claims with respect to -- objections
14 with respect to claims brought by the Bank of New York Mellon.
15 Those are proceeding on an uncontested basis. I've spoken with
16 counsel for Bank of New York Mellon. They are not proceeding
17 and they have not responded. The claims to be disallowed and
18 expunged on an uncontested basis are found in Exhibit 18, and I
19 respectfully request that the Court disallow and expunge those
20 claims.

21 THE COURT: As to the ones you've identified on that
22 exhibit, the objection is granted.

23 MR. ROLLIN: Thank you. The other uncontested matter
24 that's identified in this particular omnibus objection relates
25 to HSBC in its capacity of trustee as well. Those are also

1 proceeding uncontested. They have not filed a response; they
2 have agreed to allow the claims to be disallowed and expunged,
3 and I request the Court do so.

4 THE COURT: That is also granted on an uncontested
5 basis.

6 MR. ROLLIN: And for the clarification of the record,
7 those are found in Exhibit 16 to this morning's agenda.

8 THE COURT: Okay.

9 MR. ROLLIN: What is proceeding on a contested basis,
10 Your Honor, are objections to claims of Citibank and Wilmington
11 Trust Company as indenture trustee and successor indenture
12 trustee respectively, and to U.S. Bank in its capacity as
13 trustee. And those objections and those claimants in the
14 briefing share many common elements. And in the interest of
15 economy, I'll address them together, with the Court's
16 permission, drawing distinctions where appropriate.

17 Your Honor, after giving a little bit of background,
18 I'd like to hit on three narrow points. One is that these
19 claimants have provided no facts that would allow anyone to
20 assess the validity of the claims that are at issue in this
21 hearing. These are insufficient documentation objections.

22 Number two, as a result, the claims do not meet the
23 information and documentation requirements for the bar date
24 order and the relevant case law, and as a consequence, they do
25 not rise to the level of a properly filed claim under Rule

1 3001, are not entitled to a presumption of validity, and should
2 be disallowed and expunged.

3 But by way of background, and just to give the Court a
4 little bit of context, I'd like to speak about the general
5 transaction structure and the representations and warranties
6 that are at issue. I think that'll help frame the further
7 discussion.

8 As the Court is aware, Lehman bought residential
9 mortgage loans on the secondary mortgage market through
10 affiliates from third parties and also some that were
11 originated by affiliates, and they transferred through the
12 chain of companies and were deposited into securitization
13 trusts. Trustees like Citi, Wilmington, and U.S. Bank were
14 appointed to administer the trust in accordance with the trust
15 documents, and servicers and master servicers were appointed to
16 interact with borrowers, handle remittances and those types of
17 things.

18 Now, the trust agreements contain representations and
19 warranties about the quality and characteristics of the
20 underlying mortgage loans, and it's these representations and
21 warranties that form the significant basis of the claims at
22 issue. But it's worth noting -- and we'll come back to this
23 point later because it's an important one -- that not all the
24 representations and warranties were given by the debtors. In
25 quite a number of instances, the representations and warranties

1 of the unaffiliated sellers were simply passed into the trust.

2 The trust agreements also had a separate obligation,
3 and that was to require the depositor to tender the loan
4 documents on a loan-by-loan basis, and they would go to a
5 custodian that was working for the trustee who would verify
6 that there were no errors or omissions in the documents and
7 they would provide -- they call those document exceptions --
8 and they would provide an exception report and under certain
9 circumstances, the depositor would have an obligation to cure
10 those. And that is also a very significant portion of U.S.
11 Bank's claim. I believe Citi has document exceptions, as well;
12 they just haven't provided us any information about them.

13 Both the representation and warranty claims and the
14 document exception claims have a series of elements and
15 conditions precedent set forth in the relevant contracts, and
16 those are all governed by state contract law as to whether
17 liability arises.

18 As to the claims in this case, the trustees' combined
19 claims cover just over 1.1 million residential mortgage loans:
20 about a million from U.S. Bank and about 70,000 from the
21 City/Wilmington group. And the trustees demand payment for the
22 entire aggregate unpaid principal balance of all 1.1 million
23 loan.

24 Now, what we did was, to the extent that the claimants
25 provided any information whatsoever that purported to support a

1 loan-level breach, that is, any breach information at all,
2 regardless of whether it satisfied all of the elements of
3 liability under the contracts, or if they provided us a
4 document exception, whether or not it was material and whether
5 or not it was harmful, two of which are required elements for
6 liability, to that extent, we are not pursuing disallowance at
7 this time. We want to -- we'll review those, determine whether
8 there's a -- how to proceed, based on that. But if they gave
9 us anything, we're not proceeding. And the schedules attached
10 to our reply papers lay that distinction out.

11 What we are proceeding with and what we are asking the
12 Court to disallow are approximately -- claims based on
13 approximately 800,000 residential mortgage loans for which the
14 claimants have provided no factual basis for liability, no
15 breach evidence or specific allegation at all. About 740,000
16 of those are within the U.S. Bank group, and approximately
17 70,000, save maybe 60 or so loans, are in the City/Wilmington
18 Trust Company group. Not only have they not provided us any
19 information, there's actually evidence to support -- that would
20 contradict the validity of these claims.

21 With respect to Citi, attached to the declaration of
22 Keri Reed, which is part of our reply papers, is a notice and
23 request for direction sent by Citibank to the certificate
24 holders in all of the deals. And it tells them, page 2,
25 paragraph 3, that the trustee has not independently analyzed

1 whether the claims set forth in the proofs of claim will be
2 allowed. And on page 1 at paragraph 2, the proofs of claim
3 were filed by the trustee as a protective matter in order to
4 avoid the loss of rights against the debtors. In other words,
5 they haven't analyzed whether they have a claim at all. They
6 filed the claims prophylactically. In fact, Your Honor, their
7 loans that are in these deals are performing at a rate of just
8 over eight-one percent; that's also, I believe, in Keri Reed's
9 declaration.

10 Now, loan performance doesn't necessarily tell you
11 whether there's a breach or not. You can have a breach where a
12 loan doesn't go into default. You can have a loan that goes
13 into default that doesn't have a breach. But an eight-one
14 percent in those deals is indicative of whether there are
15 material breaches, certainly in the aggregate, which was the
16 nature of their claim. In fact, Citi concedes that if you
17 demand -- and this is exactly what they did -- but if you
18 demand the entire unpaid principal balance of the loan pools,
19 that that would be -- their quote -- "it would grossly
20 overstate the amount of the claims". Their language is: "The
21 Trustees do not contend that the claims should be allowed in an
22 amount equal to the aggregate amount of the underlying mortgage
23 loans in each transaction; doing so would grossly overstate the
24 amount of the claims." That's from their response brief at
25 page 8. But that's exactly what they did, until we objected.

1 And they still haven't modified their claim amount. They're
2 still -- technically, their demand is for the entire UPB. The
3 same is true for U.S. Bank, and the same is true for lots of
4 trustees. Rather than vetting, they just sort of dumped it and
5 claim liability on every single loan in every single pool.

6 U.S. Bank's -- the evidence that calls U.S. Bank's
7 claims into question, I think, is even more compelling, Your
8 Honor. U.S. Bank also made a claim for the aggregate unpaid
9 principal balance for all of the mortgage loans in all of their
10 deals. Now, their securitizations are performing at a rate of
11 sixty-seven percent, but more importantly, U.S. Bank sends out
12 remittance reports to its certificate holders, and in 60 of the
13 226 at-issue transactions, they state right on their remittance
14 reports -- and these are only two months old -- that they know
15 of no material breaches, and yet they've made a claim against
16 the debtors for material breaches for every single one. Your
17 Honor, they've not evaluated whether they have claims with
18 respect to those 800,000 loans, and they haven't provided us
19 any information with which we can evaluate whether there's
20 liability as to those 800,000 loans. I've pointed out some of
21 the things, even without having an opportunity to review any
22 documentation, that suggest that their claims are grossly
23 overstated.

24 THE COURT: Well, let me ask you this; how could that
25 be done?

1 MR. ROLLIN: How could what be done?

2 THE COURT: What you just said; how would you
3 determine material breaches with respect to the pool of loans.

4 MR. ROLLIN: Sure, I'm glad to answer that. I'm glad
5 to answer that because that's exactly what I and my firm do on
6 behalf of the debtors when we're prosecuting representation and
7 warranty claims out there in courts across the country and are
8 doing so now. We -- the debtors have a process by which -- and
9 this is on their whole loan portfolio, right, loans and losses
10 that are Lehman's and have not been securitized. We simply --
11 the servicer has mechanisms and the debtors have mechanisms.
12 We have an infrastructure by which we evaluate loans using
13 whatever criteria we think are appropriate to determine whether
14 there's been a breach.

15 So here are the elements. You have to have a breach
16 of a representation and warranty that causes a material and
17 adverse impairment on the value of the loan and there's a
18 contractually-defined repurchase price that's used. Then you
19 have an obligation to give notice. The debtors have that
20 mechanism and have used that mechanism pre-bankruptcy for quite
21 a number of years. I've been doing this since 2007; they've
22 had other lawyers who were doing it beforehand.

23 So there is a mechanism to go through your loans,
24 using whatever criteria you want. For example, you have an
25 originator that you think is problematic or that you had to

1 terminate because of some problem. You think there may be
2 problems with their loans. You go through their loans and
3 figure out whether or not there's a potential for breaches.
4 You dig down. If you find them, you prosecute them, you plead
5 them, or you at least give notice and try to work it out. So
6 that -- now, the fact that it can be done is reflected by the
7 fact that U.S. Bank, for example, found 727 breaches, and they
8 sent that information to us after we filed the objection and
9 asked for it. And we are no longer seeking disallowance for
10 those claims.

11 So it's capable of being done; we do it in courts
12 across the country. U.S. Bank and Citi have participated in
13 loan repurchase litigation, primarily through Aurora Loan
14 Services, the master servicer, at least since the end of 2006.
15 So you vet the loans, you find the breaches, you give notice.
16 If the counterparty doesn't respond, you prosecute, if that's
17 what you choose to do in your business judgment.

18 THE COURT: So how could this have been done
19 differently by these institutions approaching the bar date. Is
20 it your position that what they should have done was to go
21 through a loan-by-loan review to determine the existence of
22 breaches?

23 MR. ROLLIN: Well --

24 THE COURT: Because that doesn't seem like a
25 reasonable exercise.

1 MR. ROLLIN: Let me see if I can -- here's how it
2 works in practice, and I think their lawyers will agree, if
3 they know. In practice, the trustee or, through its servicer,
4 doesn't even begin to look for breaches until a loan goes into
5 default. As I said before, a default isn't necessary to have
6 breach. You can have a breach without a default. But as a
7 business decision, that's what they choose to do because they
8 think it would be -- and I agree -- it would be a significant
9 task to do otherwise, but that's not to say that you can't, or
10 that in the interest of the parties who you're trying to
11 protect, you shouldn't. You can look at pools and see that
12 they have a very significant, for example, default rate and
13 then grow concerned about that. Use analytics, and then dig in
14 a little bit deeper. And I think that they could have done
15 that and they have done that and they did that pre-bankruptcy.
16 And pre-bankruptcy, they knew to sue the transferors, where
17 liability -- in our briefing, we talked about the different
18 channels through which Lehman acquired loans. There are bulk
19 sellers who are called transferors in the trust documents,
20 there are correspondent lenders that sell on a more fluid basis
21 through Lehman Brothers Bank to Lehman Brothers Holdings, and
22 then there are some Lehman originations. Well, under the trust
23 documents, including the trust documents provided as exhibits
24 by Tim Pillar from U.S. Bank just yesterday or the day before,
25 it's -- the trust agreements specifically say that if you

1 have -- if a trustee has a representation and warranty claim on
2 a transferor-originated loan, the first channel, their only
3 recourse is against that transferor, and specifically not
4 against Lehman. In pre-bankruptcy, that's precisely what they
5 did through Aurora Loan Services who was prosecuting the claims
6 at the time. But now that we're in bankruptcy, they just took
7 everything, their entire portfolio, and dumped it on the
8 debtors and then placed on the debtors the burden of going
9 through it finding out, no, this is a transferor loan or this
10 is a loan for which you didn't give notice, which is the
11 condition of proceeding. So they can do it; they have done it.
12 As a business decision, in these cases, they've chosen not to
13 do it, and instead, placed the burden on the debtors to do it.

14 Does that answer the Court's question?

15 THE COURT: I think you have answered the question,
16 but I'm still a little confused as -- well, I'll express
17 confusion when the objectors come forward, as well, as to what
18 relief you're seeking today with respect to these matters as to
19 which issue has been joined because it seems to me that there
20 is an exercise that probably needs to be done on a loan-by-loan
21 basis that presumably servicers are capable of doing. And are
22 you suggesting that what you are seeking today is, in effect,
23 disallowance of all claims to the extent those claims have not
24 yet been proven to the satisfaction of the debtor by virtue of
25 at least the identification of loan defaults.

1 MR. ROLLIN: We'll not even ask that they be proven to
2 the satisfaction --

3 THE COURT: I understand; to the extent that anybody
4 has come forward with even a scintilla of proof with respect to
5 the existence of a loan default, you are not seeking relief.
6 But you are seeking what amounts to elimination of all claims
7 to the extent that no one has come forward with any proof of
8 any sort with respect to loan defaults as to the balance of the
9 loans; do I understand that right?

10 MR. ROLLIN: I don't think that loan defaults are the
11 issue. It is -- the issue is whether they've identified a
12 breach. And so what we're asking be disallowed are all claims
13 on all loans for which no breach of any representation of
14 warranty has been identified.

15 THE COURT: Okay.

16 MR. ROLLIN: Thank you.

17 THE COURT: And there's no equivalence between
18 breaches and defaults?

19 MR. ROLLIN: There -- to say there's no -- I'm not
20 saying there's no equivalence; I'm saying that default is not a
21 requirement of breach and breach is not a requirement of
22 default, although servicers and trustees do use default as a
23 way to limit the population of loans they go through, because
24 they don't start looking at them until they go into default for
25 breaches of representations and warranties, and in fact, even

1 then, they don't go through all of them. They typically make
2 decisions based on whether it's a particularly troublesome or
3 concerning originator or whether it's a very high loss. I
4 can't speak specifically to what these trustees have done; I
5 understand that's the general practice.

6 THE COURT: Okay.

7 MR. ROLLIN: But one point to make in that context,
8 Your Honor, is that these are pre-petition breaches, right?
9 The contract was breached, if at all, at the time of the
10 closing of the deal because the representations and warranties
11 were as of the closing. The document exceptions, they'd have
12 to give those to us, to the debtors -- specifically to the
13 depositor 180 days after closing and only if the depositor then
14 didn't cure material document exception that was to be agreed
15 upon in good faith by the parties, process that didn't take
16 place, only then would a breach -- so these are all pre-
17 petition. They would like to characterize them as contingent,
18 but by not looking for them because that's your business
19 decision, that does not make a pre-petition noncontingent claim
20 a contingent claim.

21 Now, Your Honor, under the bar date order, as you
22 know, they are required -- claimants are required to provide
23 the factual and legal bases for their claims and the order
24 requires that they do so with specificity. And in practice in
25 the courts, including in bankruptcy courts in this district is

1 in the context of mortgage-based claims, you provide a summary
2 of information and then make the underlying documents available
3 to the debtors because everybody realizes it is very
4 voluminous. And that is exactly the process the debtors tried
5 to implement. In the fall or so in 2010, we began a series of
6 ongoing communications with the claimants including these
7 claimants, and we created a spreadsheet, a form spreadsheet
8 that they could fill out with key data points for each loan,
9 and we asked them to complete it. Citi gave us six loans; U.S.
10 Bank gave us zero loans. Only after we filed the objection did
11 some more information come in: 727 loans from U.S. Bank, the
12 same 6 loans from Citi. To the extent that we had rights --
13 and this is an issue I'll talk about in a moment, but to the
14 extent that debtors have rights to information, we found a few
15 more breaches: twenty-five for U.S. Bank, fifty-three for
16 Citi. And we're not seeking disallowance for those, of course.
17 But only after we filed the objection did they give us some
18 information and this summary, and otherwise, otherwise nothing.

19 Now, without information about the claims, we have no
20 way -- the debtors have no way to determine the validity, and
21 this is all the more true when we consider that there is
22 evidence that the creditors themselves don't know whether they
23 have claims. They just filed prophylactic claims in the entire
24 aggregate amount for every single loan in their deals. Under
25 the procedure order, Your Honor, insufficient documentation --

1 a document that is -- pardon me -- when a claim does not
2 provide sufficient documentation for the debtors to evaluate
3 the validity of a claim, that is a ground for disallowance, the
4 rationale being that insufficiently documented claims of these
5 types are simply not properly filed under Rule 3001, and are,
6 therefore, invalid. No presumption of validity arises.

7 Now, briefly to touch on the claimant's responses, we
8 talked about one of them a moment ago, and that is they
9 characterize these claims as contingent claims. But these are
10 not contingent claims in the meaning of the Code. These
11 breached occurred under state law well before the petition, and
12 merely not looking for them or not creating an infrastructure
13 to look for them or making the business decision to not look
14 for them does not convert them to contingent claims. There's
15 no future event upon which liability will be determined.

16 The other reason they say that they don't have to
17 provide information is they say the debtors have access to the
18 information. Well, the debtors don't. Aurora Loan Services is
19 a nondebtor subsidiary that serves as a master servicer for a
20 great many of these loans, but Aurora Loan Services has a
21 separate contractual relationship with the trustees that's
22 created in the trust documents, and they can only provide that
23 information to the trustees. We've asked them, and they won't
24 give it to us except with these exceptions. There are certain
25 transactions for which SASCO, the depositor, does have rights

1 to the information, and where SASCO has those rights, the
2 debtors have used them and obtained at least facial breach
3 information for the loans that I just identified: twenty-five
4 additional loans for U.S. Bank and fifty-three additional loans
5 for the Citi/Wilmington Group. And so their argument on that
6 is just incorrect. It doesn't reflect a thorough understanding
7 of the transaction and the relative rights and responsibilities
8 of the parties.

9 So, Your Honor, back to my original three points,
10 they've not provided us -- they have a requirement to provide
11 sufficient documentation to evaluate the claims both under the
12 rules and under the bar date order. They have not provided
13 that information, and as a result, we respectfully request that
14 the claims to that extent be disallowed and expunged.

15 If the Court doesn't have any other questions, I will
16 sit down.

17 THE COURT: No, I'm interested in hearing from the
18 objectors.

19 MR. ROLLIN: Thank you, Your Honor.

20 THE COURT: In any order you choose.

21 MR. FAGONE: Good morning, Your Honor. Michael Fagone
22 on behalf of Citibank, N.A. and Wilmington Trust Company in
23 their respective indenture trustee capacities.

24 Your Honor, like my colleague, I have three main
25 points that I'd like to emphasize, and I'll articulate --

1 THE COURT: Are they the same points?

2 MR. FAGONE: They're the same points, but maybe the
3 opposite side --

4 THE COURT: Fine.

5 MR. FAGONE: -- of those points, Your Honor. First,
6 Your Honor, the trustees, we don't believe, have been dilatory
7 in providing information to the debtors or discussing these
8 claims with the debtors.

9 Second, Your Honor, we don't believe that the debtors
10 are correctly comprehending the claims either as filed or as
11 they've later been described to the debtors.

12 And third, we believe that the requisite specificity
13 for the claims has, in fact, been provided, and we believe that
14 we met both the letter and the spirit of the Court's bar date
15 order. So those are the three points, Your Honor, and I'll
16 touch on them briefly, if I might.

17 THE COURT: Okay.

18 MR. FAGONE: On the first point, I think it's worth
19 noting that the proofs of claim were filed in September of
20 2009. And we first heard from the debtors regarding these
21 claims in October of 2010, more than two years after these
22 cases were commenced. We recognize that the debtors and all of
23 their professionals have been extraordinarily busy in this
24 case, and we're not suggesting that they should have come to us
25 sooner. We are only pointing out, however, that it's not

1 entirely correct to suggest that the trustees have waited for
2 two and a half years to engage in a dialogue with the debtors
3 about the claims. That's not accurate.

4 THE COURT: Well, is it correct that these were, in
5 effect, protected proofs of claim that were filed without
6 conducting any meaningful diligences to the true amount of the
7 claims?

8 MR. FAGONE: These -- yes, Your Honor. These claims
9 were filed as contingent and/or unliquidated, and I think
10 that's a point that the debtors may be missing, here, is we
11 filed them and indicated on the addenda that we weren't sure
12 what the amount of the claims was. The reason that we weren't
13 sure of that, Your Honor, is something that I think you hit on
14 in colloquy with counsel: doing a loan-by-loan analysis of the
15 claims would be extraordinarily expensive and burdensome, and
16 that's something that we hope to avoid through discussion with
17 the debtors, but we were in a position, we believed, where we
18 needed to file the claims or risk having them be barred for
19 failure to meet the bar date. So we filed them and we tried
20 to -- and I think we were successful -- indicate that they were
21 contingent and/or unliquidated as to amount. So -- and we
22 don't stand before this Court and suggest that the claims
23 should be allowed in the total aggregate unpaid principal
24 balance of the mortgage loans in each trust. That would not be
25 an accurate presentation of what we think the amount would be.

1 THE COURT: But isn't there a problem, when you come
2 right down to it, that goes to the true nature of the claim and
3 whose burden it is to determine that because the notion of the
4 bar date is to put the debtor on actual notice of actual
5 claims, not claims that are theoretical. And to put in a claim
6 for the full amount is to be protective, but also to be
7 completely misleading.

8 MR. FAGONE: Two things, Your Honor. Yes, I agree
9 that the purpose of the bar date is to put the debtor on notice
10 of claims. Had we simply filed proofs of claims that listed
11 the aggregate unpaid principal balance of the mortgage loans
12 and said that's our claim, we would like it allowed, I would
13 agree with Your Honor that that would be misleading. But
14 that's not what we did. Our -- the addenda to our proof of
15 claim which is attached to our response, in our view, made it
16 very clear that we were saying we don't know yet; we don't know
17 yet whether any of these 80,000 loans will go into default such
18 that the master servicer will then investigate whether there
19 has been a breach of a rep or a warranty or whether there's a
20 mortgage loan defect claim. So that -- there was no intention
21 to mislead anyone.

22 Subsequent to the filing of the proofs of claims, the
23 debtors have asked for some information. They've asked for
24 loan-level data -- they've never once asked us for the
25 exception reports -- they've asked us for the loan-level data,

1 and we went to the master servicer and asked for it. What we
2 received, we provided. We haven't chased down every last bit
3 of information the debtors have provided for two reasons. One,
4 that would involve incredible expense and time, and two, the
5 debtors have consistently maintained the position that there
6 will never be any sort of estimation of unliquidated claims of
7 this type in this case. So for us, we had difficulty seeing
8 why the trustee should be put to the burden of chasing down
9 this information, if we were only then going to be faced with
10 the response, that's great, but you didn't know the amount of
11 the claim as of the bar date; therefore, the claims are
12 disallowed.

13 Your Honor, I think it's worth noting that the debtors
14 acknowledge that there are valid, legitimate claims here. And
15 I point just briefly, Your Honor, to the disclosure statement
16 that the debtor filed yesterday. And under the heading
17 "residential mortgage loan representation/warranty claims"
18 which appears at page 45, the debtors write, and I'll just read
19 briefly, if I could, "Based on the debtors' review of claims to
20 date and the debtors' knowledge of the success rate of asserted
21 repurchase and indemnity claims in the market, the debtors
22 estimate that the amount of the allowed claims, based on the
23 debtors' repurchase and indemnity obligations for residential
24 mortgage loans could ultimately be approximately 10.4 billion."
25 Those are the debtors' words. These are not fictitious claims.

1 We concede, Your Honor, in light of the debtors'
2 objection, that the proofs of claim may not carry prima facie
3 effect as to amount, but we believe that they do carry prima
4 facie effect as to validity, and I think the debtor may be
5 confusing those two separate concepts: validity on one hand
6 and amount on the other.

7 That, Your Honor, leads me to my second point, which
8 I've touched on, and that is we don't assert that these are
9 noncontingent liquidated fixed claims. That's not -- that was
10 never the assertion, and that's not the position we're taking
11 before the Court this morning. What we don't know, and we
12 admit we don't know, is whether there are defaults. The Reed
13 declaration suggests that eighty-one percent of the loans in
14 the transaction are performing. And if that's true -- I don't
15 know whether it is, but if that's true, there's a substantial
16 likelihood that additional breaches will be discovered in the
17 future. And those breaches may give rise to liability on the
18 part of the debtors, liability that I believe the debtors have
19 admitted. The loan documents -- the transaction documents are
20 reasonably clear.

21 It's reasonable, then, I believe, to assume that some
22 portion of the nineteen percent of the loans that aren't
23 performing, which is some 15,000 mortgage loans, may result in
24 losses for which the debtors might be liable. We don't know
25 that because when there's a default and a breach that's

1 discovered, there will need to be a complicated analysis of a
2 multitude of documents that are involved, as counsel alluded
3 to. Some of these transactions involved origination by
4 correspondence and reps and warranties were passed along, and
5 in certain instances, the debtors are insulated from liability
6 if those transferors have liability. But there are a lot of
7 documents that are going to have to be looked at and analyzed
8 to decide whether there is liability by the debtors, and if so,
9 the amount of that liability once breaches are discovered. But
10 the --

11 THE COURT: Can I ask you a very --

12 MR. FAGONE: Yes, certainly.

13 THE COURT: -- basic question about this distinction
14 between defaults and breaches? It's the same confusion that I
15 exhibited during the debtors' presentation. Do you acknowledge
16 that there is no equivalence between defaults and breaches of
17 these warranties, and then I really have a question that goes
18 to ordinary course practice? I assume that it is possible,
19 although it might be very expensive, to identify whether or not
20 there are any breaches in the entire portfolio that includes
21 performing loans, and that based upon what you said, there's an
22 ordinary course practice of not looking for breaches until
23 there is a default. Is that correct?

24 MR. FAGONE: I believe so, Your Honor, yes. I believe
25 it's possible for someone to take a mortgage loan file and

1 examine it and determine whether any of the representations or
2 warranties made by the debtors or the transferors are
3 materially incorrect. So the answer to that is yes. And I
4 believe that the answer to Your Honor's question about the
5 ordinary course is also correct. When these loans -- when the
6 borrowers on these underlying mortgage loans are making their
7 monthly mortgage payment and they're paying their taxes, and
8 they're otherwise doing what they're supposed to be doing, I
9 don't believe that there's any reason to or that the business
10 practice involves taking the loan file out and auditing that
11 file to see if there's a problem. So I think there is an
12 equivalence, Your Honor, from a practical sense; maybe not from
13 a legal sense in terms of what the documents require or
14 describe, but I believe that there is an equivalence.

15 THE COURT: Okay.

16 MR. FAGONE: Have I answered Your Honor's question?

17 THE COURT: That answers it; thank you.

18 MR. FAGONE: Okay, thank you.

19 Just moving on, Your Honor, lastly -- I'm sorry, on
20 this distinction between validity and amount, we don't believe
21 that the inability today, at this particular stage of the
22 contested matter, to know the precise amount of the claims
23 means that the claims should be disallowed, which is what I
24 understand the debtors to be seeking. Nothing in Section 502
25 provides for that disallowance on that basis; in fact, Section

1 502(b) prohibits disallowance, simply because a claim is
2 contingent or unmatured. There needs to be something else, I
3 think, under 502(b)(1) before a claim can be disallowed, at
4 least on that basis, and the debtors haven't suggested any
5 other basis than 502(b).

6 Section 502(c) deals with estimation of contingent or
7 unliquidated claims in certain circumstances that may not be
8 present here, but the existence of that section, combined with
9 Section 502(b), in our view, shows that an inability to know
10 the amount doesn't translate to disallowance, as the debtors
11 suggest.

12 Just moving on lastly, Your Honor, to the bar date
13 issue briefly, we think that we met the bar date. We recognize
14 that the bar date order was the product of protracted
15 negotiation and that it has some custom-made features. We
16 think, however, we complied with its terms by providing
17 supporting documentation. We admit that we did not provide
18 every single transaction document or all of the exception
19 reports when we filed the proofs of claim. We think that would
20 have been burdensome on the trustees, burdensome on the debtors
21 at that stage, and burdensome on the claims agent. The bar
22 date order required certain types of information with respect
23 to derivatives claims and with respect to guarantee claims, as
24 I'm sure Your Honor recalls. It didn't say anything about
25 specific information on residential mortgage loans.

1 Notwithstanding that, we made a good faith effort to put the
2 debtors and the estates on notice of the bases for our claims,
3 and we think that was all that was required. The debtors, in
4 fact, concede that in our proof of claim, we identified the
5 contractual provisions that might give rise to liability. So
6 we think that that was sufficient to meet the bar date order's
7 requirements, Your Honor.

8 And lastly, in conclusion, we agree with the debtors'
9 suggestion that evaluating these claims would be difficult and
10 expensive. We agree with that. We also believe, however, that
11 unless the parties can come up with some sort of a resolution
12 for these types of claims, the Bankruptcy Code requires a
13 process to determine the amount of the claims. And I think the
14 Court should be aware that there have been discussions between
15 the debtors and between similarly-situated trustees about a
16 process that could be used to resolve a significant universe of
17 claims in these cases. Those discussions haven't materialized,
18 but they are ongoing, and if they're not fruitful, we believe
19 that the parties will be required to undertake significant
20 effort at significant expense to determine the amount of the
21 claims for purposes of allowance.

22 And that's all I have, unless there are questions.

23 THE COURT: I do have a question in reference to your
24 last comment. Is it your view that these objections should not
25 be allowed so that a process can go forward which would result

1 in potentially a consensual agreement as to some percentage of
2 loans or some percentage of claim amount that might be deemed
3 allowed, or alternatively, that there would be a need to go
4 through these loan files, loan-by-loan, regardless of default
5 in order to actually determine the breaches?

6 MR. FAGONE: The former, Your Honor. In other words,
7 I want to be careful because I don't want to inform the Court
8 of the precise discussions that have been taking place, but --

9 THE COURT: I don't want to know about that.

10 MR. FAGONE: Understood. But no, Your Honor, I think
11 the expectation is that if these objections are overruled, one
12 of two things would happen. First, the parties would continue
13 working toward some sort of efficient resolution of the claims,
14 whether it's via a protocol like the one that was used in New
15 Century, or whether it's through some other mechanism, I don't
16 know yet. That's one option. The other option, Your Honor, is
17 that the debtors join the issue by raising objections on the
18 merits and the parties are tasked with coming up with a
19 scheduling order for hearing to determine the amount of the
20 claims, which I think would involve expert testimony and
21 analysis and analytics of the type that counsel referred to in
22 his remarks to the Court. So those are the two options that I
23 see that we think would be appropriate, under the
24 circumstances.

25 THE COURT: All right, thank you.

1 MR. FAGONE: Thank you, Your Honor.

2 MR. ROLLIN: Your Honor, just speaking with counsel
3 for U.S. Bank, it might be useful for the Court if I just have
4 some brief reply remarks with respect to Citi, and then U.S.
5 Bank proceed, and then reply with respect to them just to keep
6 things a little bit more organized. Would that be all right?

7 THE COURT: Wasn't what I had in mind, but if it's --

8 MR. ROLLIN: We'll do whatever the Court has in mind.

9 THE COURT: What I have in mind is hearing all the
10 objectors, and then you can respond in whatever order you
11 prefer.

12 MR. ROLLIN: Yes, Your Honor.

13 MR. PRICE: Good morning, Your Honor. Craig Price on
14 behalf of U.S. Bank which serves as trustee in these cases for
15 more than 200 residential real estate trusts. As both the
16 debtors and Citibank has made clear, the objections relate to,
17 first, representation and warranty claims, as well as document
18 deficiency claims. The various trust agreements contain about
19 twenty -- generally twenty representations and warranties that
20 needs typically relate to the quality of the mortgages that
21 were placed into the trust. While many of these, as the
22 debtors have made clear, specified that the originators, not
23 necessarily the debtors, will be responsible for the breaches,
24 the debtors did specifically retain a number of representation
25 and warranties in the trust agreements.

1 In addition, an affiliate of the debtors has also
2 served as an originator. The trustee does not administer the
3 individual loans. These various loans are administered by
4 servicers who are overseen by master servicers. In order to
5 make a claim for the breaches of representation and warranties,
6 the trustee has requested from the master servicers a list of
7 all the mortgages known with breaches of representation and
8 warranties. The trustee has provided this information to the
9 debtors, as the debtors made clear, and the debtors assert to
10 date that there have been claims for approximately 800
11 individual mortgage loans.

12 As I said before, the mortgage loan deficiencies
13 relate to the documents actually inside the mortgage files.
14 These documents are retained by custodians who review each of
15 them for a nonsubstantive basis to determine whether all the
16 appropriate documents are there. They don't look at -- they
17 don't make inquiries to whether if a document's executed that
18 an actual individual executed that, that the proper person
19 executed it. They just make sure these documents are signed.
20 And we have transmitted reports from the custodians to the
21 debtors that approximately twenty-six percent of the loan files
22 contain possible deficiency claims, which, considering that
23 U.S. Bank has over a million mortgages, that's 260,000 files
24 that contain possible deficiencies.

25 Contrary to the debtors' claims, U.S. Bank has

1 provided over a million pages of documents to the debtors.
2 These include all of the transactional documents with respect
3 to over 200 securitization transactions.

4 THE COURT: Let me just understand --

5 MR. PRICE: Sure.

6 THE COURT: -- what that process has been, though.
7 You didn't provide those documents at the time of filing the
8 proof of claim. I assume those --

9 MR. PRICE: That -- that's right.

10 THE COURT: -- documents had been filed with the
11 debtor as part of some ongoing process of --

12 MR. PRICE: That's right.

13 THE COURT: -- updating the claims.

14 MR. PRICE: We created an extranet site where we
15 uploaded all of those documents because it's my understanding
16 even the documents that the debtors themselves were involved
17 with they didn't have those, so we created a -- essentially a
18 web site for all of the transactional documents. And we've
19 been -- that's been an ongoing process. I know as recently as
20 two weeks ago they asked for certain certifications, and we've
21 given them those. So it's been an ongoing process for quite
22 some time that's involved an incredible amount of expense and
23 time by numerous parties.

24 THE COURT: Okay. At this instance, did that
25 process -- was that something that you wanted to do, or

1 something the debtor --

2 MR. PRICE: That was the debtors' request.

3 THE COURT: -- requested, or something that was agreed
4 to by both parties?

5 MR. PRICE: It was agreed to by both parties that we
6 would do it. And we generally have been responding to the
7 debtors' requests for documents, but we've also contacted them,
8 and you know asked, what do you need; what documents do you
9 want? So I think we've been very cooperative and tried to do
10 this as a process together in terms of getting them the
11 documents that they need.

12 THE COURT: Okay. Well, beyond this factual predicate
13 faired argument, what are your legal arguments?

14 MR. PRICE: Okay. Well, just let me finish by saying
15 that the debtors have -- with respect to all the individual
16 loan files that we have given them, they've withdrawn their
17 claims.

18 So what we're talking about are those claims that have
19 yet to be revealed to the debtors or given to them with regard
20 to specific breaches of individual loan files. And what we
21 would say is that, you know, most of these files, while we
22 don't know if they have defects or not, they're essentially
23 latent defects. They remain hidden in these files. We can't
24 look in an individual loan file and know that a particular
25 person is going to, you know -- if their mortgage -- if action

1 is taken with regard to mortgage, for instance, if the person
2 goes into default, that they will then claim that they didn't
3 actually sign this document, or that they were fraudulently
4 induced into, you know, a mortgage that they couldn't afford,
5 or that the appraisal was wrong. We can't -- just from an --
6 on a loan-by-loan basis, even if we undertook this sort of
7 investigation that the debtors are suggesting that we
8 undertake, we couldn't possibly find that information because
9 on a review of the file you wouldn't know if someone was
10 fraudulently induced into a mortgage that they couldn't afford,
11 or that they didn't actual -- even if there's a signature, that
12 someone else signed this, or that there -- that they -- there
13 was insufficient documentation about their income. I mean you
14 just wouldn't be able to find that. And so a substantive
15 review of every single mortgage file wouldn't be sufficient in
16 this instance in order to recognize where claims for breaches
17 of representation and warranties exist. It just -- it wouldn't
18 happen, and that process in of itself would be incredibly
19 expensive.

20 And if you looked at all of the files, you also
21 wouldn't know which ones are going to go into default, for
22 instance; they may be performing. There may be reps and
23 warranty violations that exist, but the people are paying their
24 mortgage on time. So the process of going -- of doing that,
25 it's the reason why in the ordinary course they don't do that.

1 They look; they wait until some sort of action has been taken.

2 And those 800 mortgage files that we have given to the
3 debtors, those are ones where we know that there are breaches.
4 But the remaining, you know, million mortgages minus these 800,
5 we don't know if those people will go into default. We don't
6 know if there are latent breaches with regard to any of those
7 mortgages, and that's why we filed our proof of claim for the
8 entire amount. But as Citibank made clear, we did it the same
9 way.

10 We were clear that this was done as a prophylactic
11 measure, as a protective measure for the bank, and that this is
12 an unliquidated amount. We never tried to mislead them and say
13 we're seeking the entire amount of all of the mortgages and
14 their -- it's just that we can't possibly know. We're not
15 going to re-underwrite every single mortgage because even if we
16 did that we wouldn't possibly know what -- and you know, for
17 instance, there's an example involving the GreenPoint
18 transaction, which is one of the transactions that's at issue
19 here. There's an insurer, actually, in this transaction, and
20 that insurer has sued because -- claiming that these loans were
21 not what they were made out to be. The originator has sued --
22 has defended that by saying that these aren't mortgages that
23 should have ever been securitized. In that instance, there --
24 and we've told the debtors about this. They've been in receipt
25 of all the litigation documents and various letters going back

1 and forth that, if the originator succeeds, all of these
2 mortgages would need to be repurchased because that would be
3 one of the reps and warranties that they were allowed to be
4 transferred. So that litigation hasn't been finalized in any
5 way, so there's no possible way of knowing whether these
6 mortgages have breached their representation and warranties.
7 And those mortgages may be performing mortgages, so an
8 individual review of the files within that transaction, they
9 may be -- that may be my mortgage, and I --

10 THE COURT: So recognizing that this is a problem that
11 ranges between difficult to impossible, what are you proposing?

12 MR. PRICE: Well, I think that -- I think there's two
13 things. One, we would propose there's a lot of different ways
14 that this could be done. A reserve could be set up, and that's
15 been done in several different cases: the Consecro Finance
16 case, the DVI bankruptcy proceeding. I know in Consecro that
17 involved something somewhat similar in that it was manufactured
18 housing, these breaches in representation and warranties. They
19 put a mechanism in place that actually, you know, provided
20 money for when there was a loss that it would be paid out, and
21 that's one way we could do that.

22 Another way is to develop some formula to liquidate
23 the claim, and that's been done before in American Home
24 Mortgage, New Century, and the Aegis Mortgage cases. In order
25 to -- and that would have the effect of not, you know, forcing

1 the debtors and the trustees to expend vast amounts of money
2 investigating files, which even after that investigation they
3 wouldn't be able to determine whether there were actual
4 breaches of representation and warranties in these files.

5 And the only other thing I would like to say in terms
6 of a legal argument is the two cases that were -- have been
7 cited by the debtors that require that the actual mortgage loan
8 file by file be attached were both Chapter 13 cases where there
9 was one individual. And in that case, they did require the
10 mortgage to be attached, but we have a million mortgages: we
11 couldn't possibly attach all of those to our proof of claim
12 form. And even we did, it wouldn't be helpful to both to the
13 debtors or to the trustee because we still wouldn't know which
14 of those individual loans has a problem. If we located one
15 that did have a problem, it may be performing.

16 THE COURT: So is it your position that the
17 insufficient documentation objection is, in effect, one that
18 should be overruled because there is simply a practical
19 impossibility to comply with the documentation requirement?

20 MR. PRICE: That's right. I mean I think it's
21 impossible --

22 THE COURT: I'm just trying to understand your
23 position as a matter of law.

24 MR. PRICE: Right. I think that in terms of
25 document -- insufficient documentation, we've given them

1 millions of pages of documents, but we --

2 THE COURT: But you didn't do that in connection with
3 the proof of claim as much as you did it in connection with a
4 process that the parties adopted subsequent thereto.

5 MR. PRICE: Well, that's correct, but we certainly, in
6 our proof of claim addendum, said that we would provide any
7 documents that the debtors requested. But we did it as part of
8 a process with the debtors whereby we attempt -- we're
9 attempting to cooperate in order to resolve these claims and in
10 order to set up some sort of process by which --

11 THE COURT: And what you're saying is that while you
12 provided information that demonstrates that there are certain
13 residential mortgage loans that you believe may involve
14 breaches, there's a whole class of residential mortgage loans
15 where it's not possible to know now whether there are breaches
16 or potential breaches?

17 MR. PRICE: That's right.

18 THE COURT: Is that right?

19 MR. PRICE: That's right.

20 THE COURT: Okay. Thank you.

21 MR. PRICE: Okay. One other thing that I'd just like
22 to mention because it does involve a number of the objection --
23 of the claims that are being objected to is a class of
24 resecuritization claims. These were trusts where the actual
25 certificates from these residential mortgage trusts were put

1 into a different trust. They don't have actual mortgage loans
2 as part of the assets of the trust; they have certificates from
3 trusts which have mortgage loans in them. We have provided the
4 debtors with all the transaction documents in those instances,
5 and we've been working with the debtors.

6 There's a few instances where certain certificates --
7 and those are from the SASCO Series 2003-37(a) and the SASCO
8 Series 2003-31(a) -- these certificates were supposed to be put
9 into these various trusts and they never were. I think we
10 believe that they were taken as collateral right before the
11 bankruptcy occurred. And we've been working with the debtor to
12 try to find those an order to put those into these various
13 trusts. On those, we don't know what other documents that the
14 debtors are seeking to have. There are no individual mortgage
15 loans. The only reason that they're included in this is not --
16 is because in a roundabout way they have a tide of residential
17 mortgages, but those -- and we don't know what else to do
18 besides provide them with these transaction documents. They
19 haven't requested any other documentation, and we think that
20 the objections with respect to those should be adjourned until
21 the debtors can point to specific documents that they're
22 seeking.

23 THE COURT: Okay.

24 MR. PRICE: Is there any other questions?

25 Okay. Thank you.

1 THE COURT: None at this time. Is there anyone else
2 who is going to be speaking? Okay.

3 MR. ROLLIN: Anybody else?

4 THE COURT: Your turn.

5 MR. ROLLIN: Thank you, Your Honor. I think I'll take
6 U.S. Bank first, although some issues will cross. I think both
7 of the creditors, both of the trustees have told us that they
8 have provided all the information that they have where they
9 believe there's a loan specific breach that they can allege,
10 and that means that with respect to all the others they don't
11 have any proof or even allegation of a breach of representation
12 and warranty for which the debtors are liable.

13 THE COURT: Well, here's a problem I'm having, and
14 maybe you can use this opportunity to explain your position in
15 a way that resolves my concern. As I understand it, in the
16 universe of mortgages that we're talking about, there is a
17 commercial problem in identifying the existence of the breaches
18 that are at issue here, and that no rational trustee or loan
19 servicer would perform an inventory of each and every loan to
20 identify the existence of a possible breach in the absence of a
21 loan default because to do so would be both incredibly time-
22 consuming and expensive on the one hand, and probably of little
23 utility on the other because for reasons that have been
24 expressed it's very difficult to know whether or not there has
25 been a potential breach of a rep and warranty until sometime

1 later in the process. And so in my mind, and I may be making a
2 leap that is inappropriate, this is a little bit like an
3 asbestos case where it's impossible to know fully every
4 potential claimant by virtue of asbestos exposure, but
5 nonetheless plans of reorganization are developed to deal with
6 future claims, including those that haven't yet matured. Why
7 is this not like that in the sense that we have a pool of
8 loans, some percentage of which may, in fact, include these rep
9 and warranty problems, but we don't know which ones yet, but
10 it's probably possible to identify some computer program that
11 can tell you with reasonable precision how many of these are
12 likely to be bad? Those are my musings. What's your response?

13 MR. ROLLIN: There's a -- there are two questions
14 there, I think, Your Honor, and one has to do with whether it's
15 capable of being done, and that is identifying breaches before
16 they go into default, which often, as I say, the trigger for a
17 review. And then the second one is coming up with some sort
18 of, what I think the Court is suggesting, an estimation based
19 on a model. I'll address those in turn.

20 There's nothing about the event of a default that
21 creates an effect that would bear on the existence of a breach
22 of a representation and warranty. It is used as a shortcut as a
23 trigger to search, and it is done so as a business decision of
24 the trustee's. That's the way they choose to operate.
25 Different trustees are more or less aggressive with respect to

1 the identification and prosecution of representation and
2 warranty claims. There are other claimants who are not before
3 the Court in these objections right now because they have
4 provided a very significant amount of information. There are
5 these claimants who are before the Court only to the extent
6 they've provided no information but are not before the Court
7 with respect to they've provided any scintilla of evidence of a
8 loan level breach. And so it's their choice how they want to
9 manage this operation on behalf of the certificate holders, and
10 they've chosen whatever they've chosen, but they've been able
11 to provide evidence as to some and no evidence, no scintilla,
12 as to others.

13 Now, with respect to estimating, estimations have been
14 used in other bankruptcies, and those are bankruptcies that are
15 filed by -- where the debtor is an originator. We have a
16 different situation here. We are in some case an originator,
17 but primarily the debtors' role in these issues is as a seller
18 into the securitization market and a depositor, and the debtors
19 have very significant risk-shifting and indemnification rights
20 as against third parties, the third party sellers. And in
21 fact, one of things that I do is I prosecute those
22 indemnification rights rather successfully against not --
23 unaffiliated companies. And so to establish a protocol,
24 estimation protocol, by which the debtors pay out sight unseen,
25 they don't obtain any of the information that would entitle the

1 estate to its indemnification from others, or appropriately
2 shift the risk to transferors. We've talked about a number of
3 times that the -- many of these claims must be prosecuted
4 against other parties, and the language in the -- I set it
5 down, but the language in the trust agreement says the trustee
6 acknowledges that there's no liability for certain
7 representations and warranties, the type that are issue here,
8 and that the liability is that of the transferor. Any sort of
9 an estimation protocol would do away with those protections
10 that would benefit the estate and that would benefit other
11 claimants.

12 The issue that Mr. Fagone spoke about, about the
13 negotiations that are ongoing -- I want to make sure we're
14 clear --- there is no proposal that -- and the debtors have no
15 interest in this for the reasons I just mentioned -- by which
16 based on some certain percentage all of the claims would be
17 paid out. That's not a feature of the existing negotiations.
18 The negotiations would still require a loan-by-loan
19 determination. And to Mr. Fagone's credit, he just wasn't part
20 of some of the more recent discussions; I'm not holding it
21 against him in any way. He's been a terrific colleague, but
22 that's just not the case. There still would involve a loan-by-
23 loan resolution if -- to the extent that they can't come
24 forward with the loan level breach they don't get paid. Now --

25 THE COURT: Yeah, but isn't there a problem with the

1 various objections here because if I were to grant relief you
2 seek, any of these claims that might exist on a loan-by-loan
3 basis go away; they're disallowed on the basis of insufficient
4 documentation? But based upon the colloquy today, there seems
5 to be little dispute that the exercise of going through a loan-
6 by-loan review is both burdensome and commercially
7 impracticable. There are just too many of the loans, and those
8 that are performing are more likely than not loans that will
9 not include breaches; they might, but they probably don't. So
10 isn't there some injustice here in using the blunt instrument
11 of an omnibus objection to claims on the basis of documentation
12 in a setting in which it is very difficult to come up with the
13 documentation that you seek? And in fact, there has been an
14 ongoing process to gain that documentation which while not an
15 admission is at least demonstrative proof that this is a
16 difficult process.

17 MR. ROLLIN: The process that we're suggesting should
18 apply to the resolution of these claims is the process to which
19 the parties agreed in their contracts: nothing more, nothing
20 less. If they wanted -- if a trustee or any other purchaser of
21 a mortgage loan from Lehman wanted to put that loan back or to
22 seek indemnity, they had the right to do so, and they had to
23 satisfy certain conditions precedent of notice, an opportunity
24 to cure, and then establish all of the elements of liability.

25 What the claimants are asking for now is relief from

1 their contractual agreement with the debtors with respect to
2 the terms by which and the amount for which their claims would
3 be resolved. Now, if the mechanism at this juncture of
4 disallowance, the blunt instrument as Your Honor refers, is in
5 the Court's opinion too blunt, then I think we should take into
6 consideration what Mr. Fagone conceded both in his papers and
7 here. And I, frankly, don't know exactly what U.S. Bank's
8 position is on that, that there ought be no presumption of
9 validity as to these claims. They've provided no information.
10 And if there's no presumption of validity, then we can proceed
11 on that basis.

12 THE COURT: I don't know what you just said --

13 MR. ROLLIN: Sure.

14 THE COURT: -- about --

15 MR. ROLLIN: If there's --

16 THE COURT: -- the presumption of validity.

17 MR. ROLLIN: If there is no presumption of validity
18 with respect to the claims for the 800,000 loans, then, well,
19 frankly, they've had an opportunity to adduce evidence and have
20 not.

21 THE COURT: He said there is a presumption of
22 validity.

23 MR. ROLLIN: No, I believe Mr. Fagone in his papers,
24 in Citi's papers, states that they recognize that there may be
25 no presumption of validity, but --

1 THE COURT: I -- did I misunderstand you?

2 MR. FAGONE: No, you did not, Your Honor. What I
3 meant to say and I believe I said was we concede that in light
4 of the objection there may not be a prima facie effect as to
5 the amount of the claims. I was drawing the distinction
6 between amount and validity, and I apologize.

7 MR. ROLLIN: No.

8 THE COURT: That's --

9 MR. ROLLIN: I --

10 THE COURT: -- what I thought you said.

11 MR. ROLLIN: I stand corrected. Well, then I won't
12 attribute the concession to either of the claimants, but I
13 think that's still an appropriate result that these don't rise
14 to the level of a claim. I realize it's difficult, but they
15 still don't rise to the level of a claim to which a prima facie
16 validity should attach. And if the Court's disinclined to
17 disallow it this time because the instrument is too blunt, then
18 we can proceed on appropriate proceedings to resolve on a loan-
19 by-loan basis if the parties can't reach an agreement. I think
20 that's what the code and the procedures would call for in this
21 instance.

22 THE COURT: Okay. Do you have more?

23 MR. ROLLIN: I'd only -- one last point, Your Honor,
24 and that is -- well, I hope that this is one last point.
25 Counsel for U.S. Bank raised some issues about GreenPoint. To

1 the extent that there's any issue with respect to GreenPoint, I
2 got a flurry of e-mails in the middle of the night last night
3 about GreenPoint. I'm certainly willing to --

4 THE COURT: Were you awake to read them?

5 MR. ROLLIN: No, I found them this morning, Your
6 Honor. But this is a very recent, within the last twenty-four
7 hours development. I don't know if they've made a claim about
8 this, or whether they're making a claim now. It's completely
9 unclear to us. And honestly, in preparation for the hearing, I
10 haven't had an opportunity to review the ten or so e-mails with
11 attached documents from U.S. Bank.

12 THE COURT: Okay.

13 MR. ROLLIN: That's all I have, Your Honor. Thank
14 you.

15 THE COURT: Does the committee have anything to say
16 about any of this?

17 MR. O'DONNELL: Your Honor, if I may, just briefly,
18 Your Honor, Dennis O'Donnell, Milbank, Tweed, Hadley & McCloy,
19 on behalf of the committee. And just an observation having sat
20 through this argument, I think the thing that concerns us the
21 most is the burden and the financial burden and where it lays
22 in the resolution of these claims. I heard a lot of things
23 about what can and cannot get done here. I don't think I heard
24 it was utterly impossible to do a loan-by-loan review to
25 establish whether there are, in fact, breaches that could be

1 evidenced now. What I heard was that it could be expensive.

2 But I think ultimately it should be the claimants'
3 burden with respect to expense to do a cost benefit analysis of
4 their own to determine which claims they could ultimately
5 prove, and not put that burden on the estate and the Court to
6 establish some kind of process where they would essentially get
7 a free pass to prove that over a period of time. I think they
8 need to make a determination, and the Court can let them do so,
9 whether, in fact, they could ultimately prove and what quantity
10 of claims they could prove and go with those and not try to
11 prove the rest. Otherwise, you are imposing on the estate the
12 burden of either litigation or a process that would not
13 otherwise be required with respect to other types of claims. I
14 mean there are claimants who elect not to prosecute claims
15 because the cost of doing so would be -- would outweigh the
16 potential benefit. And from our perspective, I think that is
17 one measure that should guide the Court here in determining who
18 should bear the burden.

19 THE COURT: Okay. I'm going to reserve judgment on
20 this and not decide this from the bench today. And I think
21 that the presentations by all parties highlight the complexity
22 of the process of proving the existence and the amount of any
23 claim for these representation and warranty breaches in
24 residential loans. I don't rely on this, but I take judicial
25 notice of the fact that problems in the residential loan

1 origination market and the securitization of such loans are a
2 routine matter of concern in the business press, and as
3 recently as yesterday the settlement proposed in the matter of
4 Bank of America made headlines. There may be no comparability
5 to that problem and the problem which is before the Court, but
6 I am not inclined to simply broadly disallow all of these
7 claims on the basis of an insufficient documentation objection.

8 I do think that the parties, while I am reserving
9 judgment, should be engaged in ongoing efforts to try to come
10 up with some reasonable, commercially practical approach to
11 dealing with the problem. In theory, there may be no claims
12 here. And at some point if there are claims, the trustees
13 would be put to their proof, and whether they can actually
14 succeed in carrying a burden of proof establishing residential
15 and mortgage loan breaches is a matter as to which I am unable
16 to express any view at the moment. It seems to me it would be
17 extraordinarily difficult. So while these claims may reside in
18 some nether world of theory, it seems to me that in practice it
19 will be very difficult to establish these claims.

20 That having been said, I don't think that I am in a
21 position to simply automatically disallow them based upon the
22 statements that have been made today. I will also note that
23 what we have had today is an argument and does not constitute
24 an evidentiary hearing to the extent that any party believes
25 that it would be useful to the process of reaching final

1 resolution of the claims to present actual evidence as to how
2 one would go about identifying the existence of breaches and
3 the burden of doing so. I am open to a request for the
4 scheduling of such a hearing, but I will do so only at the
5 request of a party. Let's take on the next one.

6 MR. DOZORSKY: Good morning, Your Honor. This is
7 Attorney Dozorsky from California making a telephonic court
8 appearance. Just to let the Court know this is regarding claim
9 number 67087; it's an individual creditor claimant, Rosalinda
10 Barrios. Opposition to the objection to this claim was filed.
11 I'm not sure where we're at regarding these claim numbers, but
12 I just wish the Court to know that I am making a telephonic
13 appearance for this creditor.

14 THE COURT: I understand you're on the line, but I
15 don't have that on my agenda.

16 MR. DOZORSKY: Oh, really? Because I received a
17 notice from the Court stating that this hearing was to cover an
18 objection to this particular claim. This was really about a
19 time bar situation; however, in my opposition, I point out that
20 this creditor had no knowledge of the bankruptcy until she
21 filed her civil action against BNC Mortgage LLC, which is one
22 of the consolidated entities, and then she found out about this
23 bankruptcy.

24 THE COURT: Well, I can tell you that I'm not -- I'm
25 happy to hear what you have to say, but this is not on the

1 agenda for today.

2 MR. DOZORSKY: Okay. Well, all right, because that's
3 not what the notice that I got says. It may have mentioned
4 this hearing today.

5 THE COURT: What do the debtors say about this?

6 MS. DECKER: Your Honor, all contested late-filed
7 claims objections -- I'll repeat that: all contested late-
8 filed objections were adjourned and will not be heard today.
9 And the debtors sent notices of adjournment approximately a
10 week and a half ago by overnight mail, so.

11 MR. DOZORSKY: By, "adjournment," what does that mean
12 practically? That the objection to the claim is dropped or
13 what, or is going to be continued, the hearing will be
14 continued to another date? What does that really mean?

15 MS. DECKER: The hearing will be continued at least
16 until the July 21st hearing which will occur at 10 a.m. It may
17 be further adjourned by the debtors, in which case another
18 notice would be sent out.

19 MR. DOZORSKY: Okay. So I should be expecting a
20 notice that this -- as of now, the hearing on those types of
21 claims then is, in fact, continued to July 21st at 10 a.m., is
22 that correct?

23 MS. DECKER: That is correct.

24 MR. DOZORSKY: Okay. Okay. Very good. Thank --

25 MS. DECKER: Thank --

1 MR. DOZORSKY: -- you very much.

2 MS. DECKER: Thank you.

3 MR. BERNSTEIN: Your Honor, Mark Bernstein from Weil
4 on behalf of the Lehman debtors again. We have one more
5 matter: two separate motions on the agenda relating to a late-
6 filed claim motion filed more than a year ago by Mark Glasser.

7 THE COURT: Right.

8 MR. BERNSTEIN: The first motion, I guess, to be heard
9 today is motion of his counsel to withdraw as counsel to Mr.
10 Glasser. And then I'm not sure if Mr. Glasser is here or not,
11 but originally scheduled today was also the evidentiary hearing
12 that he's been -- that has been adjourned several times. So I
13 think counsel to Mr. Glasser is here to speak.

14 THE COURT: Okay. Let's -- let me find out if Mr.
15 Glasser is here. Is Mr. Glasser here?

16 MR. GRAIFMAN: I -- Your Honor, Brian Graifman,
17 Gusrae, Kaplan, Bruno & Nusbaum PLLC, counsel for Mr. Glasser.
18 I don't see him here, but I did speak with him on the phone
19 weeks ago about this. He received notice. He actually got
20 notice late because he had moved once again, although he had
21 not informed me, but he did receive notice by June 14th. I did
22 speak with him, e-mailed -- extensive e-mail with him. I gave
23 him a copy of the notice of motion, the operative second
24 amended order, a case management order, and essentially the
25 motion speaks for itself. We're really, you know, not being

1 paid for our work at this point in time and ask to withdraw as
2 counsel.

3 THE COURT: I take it based upon your communications
4 with Mr. Glasser you can confirm that he does not oppose the
5 motion?

6 MR. GRAIFMAN: He did not oppose -- he did not express
7 that he opposed the motion. I offered him the -- I explained
8 in the notice of motion that he could file an opposition. The
9 notice was actually a more fulsome notice than I would normally
10 give because of the pro se -- of the nature of him not being an
11 attorney. He's a professional, however, and he has used other
12 attorneys, so he kind of knows the score in some respect.

13 THE COURT: Okay. I'm going to grant your motion to
14 withdraw as counsel. I read the papers indicating both
15 nonpayment and an unspecified ethical concern, and on the basis
16 of that and the fact that Mr. Glasser has not appeared to
17 oppose your motion and has filed no papers in opposition to the
18 motion, the motion is granted as unopposed.

19 MR. GRAIFMAN: Thank you, Your Honor.

20 THE COURT: But you'll need to submit an order.

21 MR. GRAIFMAN: Okay.

22 THE COURT: And if you have one, you can just give it
23 to debtors' counsel who can collect orders for today's hearing.

24 MR. GRAIFMAN: Right. I don't have one with me, but
25 should I file it online, or give --

1 THE COURT: No, you should --

2 MR. GRAIFMAN: -- give to debtors' counsel?

3 THE COURT: You should either deliver an order to
4 chambers on a disk, or if you want coordinate with debtors'
5 counsel, they've generally been fairly good at managing the
6 flow of paper.

7 MR. GRAIFMAN: Thank you, Your Honor.

8 THE COURT: Okay. Since Mr. Glasser is not present in
9 Court to prosecute on his own, his personal motion to extend
10 time for filing his claim I'm not hearing that today. I think
11 in fairness to Mr. Glasser it would be useful to give him
12 direct notice that unless he takes steps on -- in his
13 individual capacity or through replacement counsel to prosecute
14 this matter which has been pending for well over a year, that
15 it would be reasonable for him to either voluntarily withdraw
16 the motion, or absent such withdrawal for it to be listed at
17 another omnibus hearing on claims objections. At which point,
18 if he fails to show to prosecute the matter, I will deny his
19 motion with prejudice.

20 MR. GRAIFMAN: Your Honor, I will provide Mr.
21 Bernstein with Mr. Glasser's current contact information:
22 address, phone, and e-mail.

23 THE COURT: Okay. Thank you. Is there any more for
24 today? Then we are adjourned.

25 (Whereupon these proceedings were concluded at 11:43 AM)

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I N D E X

RULINGS

Page Line

Fourth supplemental order on the thirty-fifth
omnibus objection granted
Fourth supplemental order on the
sixty-seventh omnibus objection granted
Amendment to 103rd omnibus objection granted
137th omnibus objection relief granted
Fortieth omnibus objection granted with
respect to the five PIMCO claims listed
on Exhibit 2
Seventy-fourth omnibus objection granted
with respect to the Federated Funds claims
numbers 15065 and 15066
127th omnibus objection to claims granted
as to claims number 40611 and 36803
139th omnibus objection to claims granted
140th omnibus objection to claims granted
141st omnibus objection to claims granted
142nd omnibus objection to claims granted
143rd omnibus objection to claims granted
144th omnibus objection to claims granted

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13 23
14 18
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17 3

18 1
18 14
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20 6

		Page	78
1	145th omnibus objection to claims granted	21	4
2	146th omnibus objection to claims granted	21	25
3	147th omnibus objection to claims granted	22	18
4	Supplemental order for the 111th omnibus	23	18
5	objection to claims granted		
6	133rd, 134th, and 135th omnibus objection to	24	7
7	claims are granted		
8	136th omnibus objection granted	25	4
9	138th omnibus objection to claims is granted	25	18
10	109th Omnibus objection granted as to claims	26	21
11	on Exhibit 18		
12	109th Omnibus objection granted as to claims	27	4
13	on Exhibit 16		
14	Motion to withdraw as counsel to Mr. Glasser	75	13
15	granted		
16			
17			
18			
19			
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C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true
and accurate record of the proceedings.

Dena Page

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